Authority: 42 U.S.C. 7401–7671q.

Dated: July 27, 1995.

Robert Springer,

Acting Regional Administrator.

[FR Doc. 95–19401 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 70

[AD-FRL–5273–9]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Nevada Division of Environmental Protection; Nevada

AGENCY: Environmental Protection Agency (''EPA'').

ACTION: Proposed interim approval.

SUMMARY: The EPA proposes interim approval of the operating permits program submitted by the Nevada Division of Environmental Protection (''NDEP'' or ''State'') for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources and to certain other sources.

DATES: Comments on this proposed action must be received in writing by September 6, 1995.

ADDRESSES: Comments should be addressed to Celia Bloomfield, Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of NDEP's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield (telephone: 415/744–1249), Mail Code A–5–2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. Introduction

As required under title V of the 1990 Clean Air Act Amendments (sections 501–507 of the Clean Air Act (''Act'')), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (''part 70''). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within one year after receiving the submittal. EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to two years. If EPA has not fully approved a program by two years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program.

This proposed interim approval applies to the NDEP title V operating permits program and sources under NDEP's jurisdiction. NDEP has jurisdiction over all sources in the State outside of Washoe County, Clark County and tribal lands, as well as all fossil fuel fired steam generating power plants inside Washoe and Clark Counties. Washoe County District Health Department received interim approval on January 5, 1995 (60 FR 1741), and interim approval was proposed for Clark County Health District on March 14, 1995 (60 FR 13683).

B. Federal Oversight and Sanctions

If EPA were to finalize this proposed interim approval, it would extend for two years following the effective date of final interim approval and could not be renewed. During the interim approval period, NDEP would be protected from sanctions, and EPA would not be obligated to promulgate, administer and enforce a federal permits program in Nevada. Permits issued under a program with interim approval have full standing with respect to part 70, and the one-year time period for submittal of permit applications by subject sources begins upon the effective date of interim approval, as does the three-year time period for processing the initial permit applications.

Following final interim approval, if NDEP failed to submit a complete corrective program for full approval by the date six months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. If NDEP then failed to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that NDEP had corrected the deficiency by submitting a complete corrective program. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In any case, if, six months after application of the first sanction, NDEP still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove NDEP's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval, unless prior to that date NDEP had submitted a revised program and EPA had determined that it corrected the deficiencies that prompted the disapproval. Moreover, if the Administrator found a lack of good faith on the part of NDEP, both sanctions under section 179(b) would apply after the expiration of the 18-month period until the Administrator determined that NDEP had come into compliance. In all cases, if, six months after EPA applied the first sanction, NDEP had not submitted a revised program that EPA had determined corrected the deficiencies that prompted disapproval, a second sanction would be required.

In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state has not timely submitted a complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to NDEP—s program by the expiration of an interim approval and that expiration occurs after November 15, 1995, EPA must promulgate, administer and enforce a federal permits program for NDEP upon interim approval expiration.

II. Proposed Action and Implications

A. Analysis of State Submission

The analysis contained in this notice focuses on specific elements of NDEP's title V operating permits program that must be corrected to meet the minimum requirements part 70. The full program submittal; the Technical Support Document (''TSD''), which contains a detailed analysis of the submittal; and

other relevant materials are available for inspection as part of the public docket (NV–DEP–95–1–OPS). The docket may be viewed during regular business hours at the address listed above.

1. Title V Program Support Materials

NDEP's initial title V program was submitted on November 22, 1993. The submittal was found to be complete on January 13, 1994. In a letter dated July 20, 1994, NDEP submitted to EPA revised title V implementing regulations. The revised regulations constituted a material change to the State's title V program, and hence, extended EPA's review period pursuant to section 70.4(e)(2). On February 8, 1995, EPA received an amended title V submittal from NDEP (''amended submittal'') and a letter from the Governor's designee requesting that the amended submittal be reviewed and acted on in lieu of the initial November 22, 1993 submittal. EPA agreed, sent a second program completeness letter to NDEP on February 27, 1995, and is taking action on the February 8, 1995 amended submittal in this notice.

NDEP's February 8, 1995 submission contains a complete program description, enabling legislation, State implementing and supporting regulations, and all other program documentation required by section 70.4. The amended submittal also contains a list of the changes made from the November 22, 1993 version, such as a revised fee demonstration and the removal of enacted bills that have since been codified into the Nevada Revised Statutes (''NRS''). The February 8, 1995 submittal does not, however, include an updated Attorney General's opinion; it includes the original version signed November 15, 1993. Consequently, the citations for several rules and legislation are expressed in a precodification format. EPA is therefore relying on elements of the initial submittal as supporting documentation for this rulemaking. The TSD, located in the docket, specifically identifies when EPA's evaluation of the program relies on supporting documentation contained in the initial program submittal.

2. Title V Operating Permit Regulations and Program Implementation

NDEP relied on additions and amendments to its existing air quality regulations (NAC 445.430–445.846) to satisfy the requirements of part 70 and title V. The first ''title V'' revisions to NAC 445.430–846 were adopted on November 3, 1993. On March 3, 1994, the Nevada State Environmental Commission made additional changes to the title V portions of NAC 445.430–846. The February 8, 1995 amended submittal contains the March 3, 1994 version of NAC 445.430–445.846; a May 26, 1994 amendment to NAC 445.7135 (fees); a February 16, 1995 amendment to NAC 445B.221 (part 72, acid rain); and a February 16, 1995 amendment to NAC 445B.327 (fees).[1] In a letter sent to EPA dated July 12, 1995, NDEP identified the provisions in NAC 445.430–846 relevant to title V implementation and requested that EPA take action only on those provisions identified. Therefore, in this proposed interim approval notice, EPA is acting on the following provisions of Nevada State law: NAC 445.430, 445.432, 445.433, 445.4343, 445.4346, 445.438, 445.4395, 445.4415, 445.4425, 445.4615, 445.4625, 445.4635, 445.4645, 445.477, 445.4915, 445.4955, 445.500, 445.5008, 445.504, 445.506, 445.5095, 445.5105, 445.521, 445.5275, 445.5305, 445.5405, 445.5431, 445.548, 445.550, 445.559, 445.5695, 445.571, 445.5855, 445.5905, 445.5915, 445.5925, 445.5935, 445.613, 445.628, 445.630, 445.649, 445.662, 445.664, 445.696, 445.697, 445.699, 445.704, 445.7042, 445.7044, 445.705, 445.7052, 445.7054, 445.7056, 445.7058, 445.706, 445.707, 445.7073, 445.7075, 445.7077, 445.7112, 445.7114, 445.7122, 445.7124, 445.7126, 445.7128, 445.713, 445.7131, 445.7133, 445.7135, 445.7145, 445.7155, 445.717, 445.7191, 445.7193, 445.7195, 445B.221, 445B.327. Provisions not included in the July 12, 1995 letter from NDEP may still be considered supporting documentation for the State's title V operating permit program.

NDEP's title V implementing regulations substantially meet the requirements of 40 CFR part 70, sections 70.2 and 70.3 for applicability; sections 70.4, 70.5, and 70.6 for permit content, including operational flexibility; section 70.7 for public participation and minor permit modifications; section 70.5 for criteria that define insignificant activities; section 70.5 for complete application forms; and section 70.11 for enforcement authority. Although the regulations substantially meet part 70 requirements, there are several deficiencies in the program that are outlined under section II.B.1. below as interim approval issues and further described in the TSD.

a. Applicability

NDEP stated in its amended submittal that it will take advantage of EPA's March 8, 1994 policy regarding fugitive emissions. NDEP will not require fugitives to be considered in determining the major source status of sources subject to post-1980 New Source Performance Standards (''NSPS'') and National Emissions Standards for Hazardous Air Pollutants (''NESHAP''). In accordance with that policy, NDEP's title V program is eligible only for interim approval. (See March 8, 1994 memorandum entitled, ''Consideration of Fugitive Emissions in Major Source Determinations,'' signed by Lydia Wegman.)

The program description, submitted as part of NDEP's title V program, indicates the State's intention to permit only major sources, phase II acid rain sources, and solid waste incinerators subject to section 129(e) of the Act (program submittal, Section VI, pp.2–4). The program description further states that NDEP's title V program does not cover nonmajor sources (''area sources'') subject to a section 111 or 112 standard or in a category designated by the Administrator. While the coverage is not consistent with section 70.3(b)(2), which states that section 111 and 112 standards promulgated after July 21, 1992 will specify whether a nonmajor source must obtain a title V permit, it is acceptable for the following two reasons: 1) EPA is deferring title V permit requirements for nonmajor sources subject to recently promulgated MACT standards (See May 16, 1995 guidance document entitled, ''Title V Permitting for Nonmajor Sources in Recent Section 112 Maximum Achievable Control Technology (MACT) Standards,'' by John Seitz, Director of the Office of Air Quality Planning and Standards); and 2) NDEP committed to expeditiously revise its title V program to reflect any action by EPA to require title V permitting for nonmajor sources (program submittal, section VI, pp.3–4).

Although NDEP's program description clearly indicates NDEP's intent to exclude nonmajor sources from its title V (i.e., Class I) permitting requirements, NDEP's regulations require any new source subject to a section 111 or section 112 standard or any new source in a category of sources designated by the Administrator of EPA to apply for a Class I–B permit (NAC 445.7044.3 and .4). In other words, by omitting the word ''major'' when specifying new source applicability, the regulations could be interpreted to require certain nonmajor sources to obtain title V permits. EPA views this applicability distinction as an inconsistency in the State's program. Prior to final rulemaking, EPA requests that NDEP provide a letter to resolve this apparent inconsistency and

[1] The citation format varies because NDEP revised its citation system after most of the implementing regulations were adopted and submitted to EPA. A citation translation key can be found in the docket at EPA Region IX.

describe under which reading the State desires EPA to act on its program.

b. Integrated Permit

NDEP's program combines the requirements for operating permits and construction permits (''integrated program''). All title V sources are identified as Class I sources and must obtain Class I operating permits that meet the requirements of title V and part 70. Sources subject to State requirements only (i.e., not subject to the requirements of title V or part 70) are identified as Class II sources and are outside the scope of this proposed approval. Existing Class I sources will be subject to Class I–A requirements, and new or modified Class I sources will be subject to Class I–B requirements.

The regulations that implement the integrated program are contained in the Nevada Administrative Code (''NAC'') sections 445.430–445.846. This interim approval addresses only those elements that pertain to operating permit program requirements for title V sources as identified above. The proposed approval is not being made under EPA's title I authority, and hence, is not amending Nevada's new source review program.

c. Insignificant Activities

Section 70.5(c) states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Section 70.5(c) also states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Under part 70, a State must request and EPA may approve as part of that State's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

NDEP's list of insignificant activities is set out in NAC 445.705.3 and referred to as permit ''exemptions.'' Despite being called ''exemptions,'' NAC 445.705.3 ensures that potential emissions from these activities will be included in all Class I applicability determinations. In addition, NAC 445.7054.2(b) requires Class I permit applications to describe all points of emissions and all activities ''in sufficient detail to establish the basis for the applicability of standards and fees,'' thus ensuring that the application will not omit information needed to determine whether or how a requirement of the Act applies at a source. EPA interprets the terms ''all points of emissions'' and ''all activities which may generate emissions of [the] air pollutants'' in NAC 445.7054.2(b) to include those from NDEP's list of insignificant activities at NAC 445.705.3.

NDEP's insignificant activities are defined by source or activity type in combination with a given size or rate. Activities without a specified size or rate cut-off qualify as insignificant if they are below the major source threshold. This high cut-off, when viewed in conjunction with the listed activities like ''agricultural land use'' and ''equipment or contrivances used exclusively for the processing of food'' would almost certainly result in necessary information being left off of the permit application. In order to be fully approvable, NDEP must provide additional criteria that will limit insignificant activities to activities that are unnecessary for evaluating the applicability of requirements at a facility.

For other State and district programs, EPA has proposed to accept, as sufficient criteria for full approval, emission levels defining insignificant activities of two tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) de minimis levels, or other title I significant modification levels for hazardous air pollutants (''HAP'') and other toxics (40 CFR section 52.21(b)(23)(i)). EPA believes that these levels are sufficiently below the applicability thresholds of many applicable requirements to assure that no unit potentially subject to an applicable requirement is left off a title V application. EPA is requesting comment on the appropriateness of these emission levels for determining insignificant activities in Nevada. This request for comment is not intended to restrict the ability of other States and districts to propose, and EPA to approve, different emission levels if the state or district demonstrates that such alternative emission levels are insignificant compared to the level of emissions from and types of units that are permitted or subject to applicable requirements.

d. Variances

NDEP has authority under State law to issue a variance from State requirements. Sections 445.506, 445.511, 445.516, and 445.521 of the NRS allow the State to grant relief from enforcement action for permit violations. EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State law.

The EPA has no authority to approve provisions of State or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance ''shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.''

e. Reporting of Permit Deviations

Part 70 requires prompt reporting of deviations from permit requirements, and NDEP has not defined ''prompt'' in its program. Section 70.6(a)(3)(iii)(B) requires the permitting authority to define prompt in relation to the degree and type of deviations likely to occur and the applicable requirements. Although the permit program regulations should define prompt for purposes of administrative efficiency and clarity, an acceptable alternative is to define prompt in each individual permit. The EPA believes that prompt should generally be defined as requiring reporting within two to ten days of the deviation. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems. For sources with a low level of excess emissions, a longer time period may be acceptable. However, prompt reporting must be more frequent than the

semiannual reporting requirement, given this is a distinct reporting obligation under section 70.6(a)(3)(iii)(A). Where ''prompt'' is defined in the individual permit but not in the program regulations, EPA may veto permits that do not contain sufficiently prompt reporting of deviations.

3. Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $25 per ton per year (adjusted annually based on the Consumer Price Index (''CPI''), relative to 1989 CPI). The $25 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the ''presumptive minimum,'' (40 CFR 70.9(b)(2)(i)).

NDEP elected to collect fees below the presumptive minimum and to submit a detailed fee demonstration of fee adequacy. Nevada's fee regulation, NAC 445B.327, was amended on February 16, 1995 to cap fees at the 1995 level, thus charging $3.36 per ton of emissions of regulated pollutants. In addition, facilities must pay annual maintenance fees per permitted source. Given the amount of fees collected from title V sources for fiscal year 1995, NDEP estimated the total annual fee revenue from title V sources to be about $599,893 during the first three years of the program.

In order to determine whether the title V fees would be adequate to cover the direct and indirect costs of the program, NDEP did a detailed workload analysis which incorporated all the activities involved in title V implementation. Based on this analysis, NDEP determined that four additional staff would have to be hired. Incorporating the cost of the four staff persons, a phased schedule for permitting sources, and other direct and indirect costs, NDEP estimated the total title V program costs to be approximately $457,079 each year during the first three years of the program.

NDEP's fee analysis demonstrates that title V fees are expected to be sufficient to cover the costs of the title V program. In order to ensure continued fee adequacy, NDEP will keep an accounting system that details expenditures associated with direct title V activities and ensures that the State's air quality management fund has adequate fee revenue to cover indirect program costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Authority and Commitments for Section 112 Implementation

NDEP has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in Nevada's enabling legislation and in regulatory provisions defining federal ''applicable requirements'' and requiring each permit to incorporate conditions that assure compliance with all applicable requirements. NDEP's submittal also contains a commitment to implement and enforce section 112 requirements and to adopt additional regulations as needed to issue permits that implement and enforce the requirements of section 112. The EPA has determined that the legal authority and commitments are sufficient to allow NDEP to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the TSD accompanying this action and the April 13, 1993 guidance memorandum entitled, ''Title V Program Approval Criteria for Section 112 Activities,'' signed by John Seitz.

b. Authority for Title IV Implementation

NDEP incorporated by reference part 72, the federal acid rain permitting regulations, on February 16, 1995. The incorporation by reference was codified in NAC 445B.221 and submitted to EPA on February 27, 1995 to be added to the State's title V operating permit program.

B. Proposed Interim Approval and Implications

1. Title V Operating Permits Program

The EPA is proposing to grant interim approval to the operating permits program submitted by the Nevada Division of Environmental Protection, Bureau of Air Quality on November 22, 1993 and revised by the amended submittal made on February 8, 1995. If promulgated, NDEP must make the following changes to receive full approval:

(1) Revise NAC 445.7054.2(h)(2) to clearly require that compliance certifications submitted as part of the permit applications include the compliance status of all applicable requirements and the methods used for determining compliance with all applicable requirements. As NDEP's rule is currently written, a compliance certification is part of the source's compliance plan, and the elements of the compliance plan are required to address all applicable requirements (NAC 445.7054.2(h)). However, the compliance certification provision, within the compliance plan framework, can be read, inappropriately, to narrow the scope of certifications to those applicable requirements that become effective during the term of the permit. Nonetheless, because NAC 445.7054.2(h)(1) requires a narrative description of the source's compliance status with respect to all applicable requirements, EPA believes part 70's compliance certification requirements will be substantially met for the interim approval period. (section 70.5(c)(9))

(2) Revise the definition of ''regulated air pollutant'' to include, in addition to those pollutants listed under NAC 445.5905: 1) any pollutant subject to requirements established under section 112 of the Act, including sections 112(g), (j), and (r); and 2) any Class I or Class II substance subject to a standard established by title VI of the Act. (Section 70.2, definition of ''regulated air pollutant'')

(3) NDEP's rule does not contain a title V permit application trigger for existing sources that become subject to the program after the program's effective date. NAC 445.7052.1 must be revised to include an application requirement for such sources. (section 70.5(a)(1)(i))

(4) NDEP's permit shield provisions in NAC 445.7114.1(j) are not fully consistent with part 70 and must be revised as follows: 1) clearly indicate that NAC 445.7114.1(j) provides for permit shields; 2) require the permit to expressly state that a permit shield exists or the permit is presumed not to provide such a shield (section 70.6(f)(2)); and 3) add a statement that the permit shield may not be extended to minor permit modifications (section 70.7(e)(2)(vi)).

(5) Add emissions trading provisions consistent with section 70.6(a)(10), which requires that trading must be allowed where an applicable requirement provides for trading increases and decreases without a case-by-case approval.

(6) A schedule of compliance contained in a title V permit must be consistent with that required in the permit application (section 70.6(c)(3)). While NDEP application provisions require all the necessary elements of a schedule of compliance, the permit requirements in NAC 445.7114.1(h) must be revised either by referencing the application requirements in NAC 445.7054.2(h)(3) or by adding that the schedule of compliance will contain a

schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance and that the schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order. In addition, the schedule of compliance must address requirements that become applicable during the term of the permit pursuant to section 70.5(c)(8)(iii)(B).

(7) The progress report requirement in NAC 445.7114.1(h)(1) is vague and must be revised to more clearly meet the requirements of section 70.6(c)(4). EPA suggests adding the following language to NAC 445.7114.1(h)(1): *''Requirements for [s]emiannual progress reports with dates for achieving milestones and dates when such milestones were achieved.''*

(8) NDEP indicated in its program description that Class I permits may be issued to portable sources (program submittal, Section II, p.8). In order to satisfy the part 70 requirements for temporary sources, NDEP must add a requirement that the owner or operator of a Class I ''portable source'' (as defined in NAC 445.5695) notify NDEP at least 10 days in advance of each change in location. (section 70.6(e)(2))

(9) Revise NAC 445.7114.1(g) to ensure that any trade under a federally enforceable emissions cap is preceded by a written notification to NDEP at least 7 days in advance of the trade. The notification must specify when the change will occur and include a description of the change in emissions that will result and how the increases and decreases will comply with the terms and conditions of the permit. (sections 70.4(b)(12) and 70.4(b)(12)(iii)(A))

(10) Remove the phrase ''Except as otherwise provided in subsection 2'' from NAC 445.705.1, as it inaccurately suggests that major sources subject to either the New Source Performance Standard for new residential wood heaters or the National Emissions Standard for Hazardous Air Pollutants for asbestos demolition are not required to obtain title V operating permits.

(11) Provide additional defining criteria that will ensure that NDEP's insignificant activities (i.e., activities exempt from part 70 permitting) are truly insignificant and are not likely to be subject to an applicable requirement. Alternatively, NDEP may restrict the exemptions to activities that are not likely to be subject to an applicable requirement or emit less than State-established emission levels. NDEP should demonstrate that these emission levels are insignificant compared to the level of emissions from and type of units that are required to be permitted or subject to applicable requirements.

This interim approval, which may not be renewed, extends for a period of up to two years. During the interim approval period, NDEP is protected from sanctions for failure to have a program, and EPA is not obligated to promulgate a federal permits program in the State. Permits issued under a program with interim approval have full standing with respect to part 70, and the one year time period for submittal of permit applications by subject sources begins upon interim approval, as does the three-year time period for processing the initial permit applications.

The scope of NDEP's part 70 program that EPA proposes to approve in this notice would apply to all part 70 sources (as defined in the approved program) within NDEP's jurisdiction. The approved program would not apply to any part 70 sources over which an Indian tribe has jurisdiction. *See, e.g.,* 59 FR 55813, 55815–18 (Nov. 9, 1994). The term ''Indian tribe'' is defined under the Act as ''any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.'' *See* section 302(r) of the CAA; *see also* 59 FR 43956, 43962 (Aug. 25, 1994); 58 FR 54364 (Oct. 21, 1993).

2. State Preconstruction Permit Program Implementing Section 112(g)

The EPA has published an interpretive notice in the **Federal Register** regarding section 112(g) of the Act (60 FR 8333; February 14, 1995) that postpones the effective date of section 112(g) until after EPA has promulgated a rule addressing that provision. The interpretive notice also explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the federal rule so as to allow states time to adopt rules implementing the federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), NDEP must be able to implement section 112(g) during the period between promulgation of the federal section 112(g) rule and adoption of implementing State regulations.

Implementation of section 112(g) during this transition period requires states to have an available mechanism for establishing federally enforceable HAP emission limits or other conditions from the effective date of the section 112(g) rule until they can adopt rules specifically designed to implement section 112(g). NDEP requires any source that constructs or modifies to obtain a permit or permit revision prior to commencing construction. As noted earlier, NDEP's program is an integrated program; that is, the permit that is issued to a new or modifying source prior to its construction will contain all preconstruction review requirements and all operating requirements. Integrated preconstruction/operating permits issued to major sources must meet all procedural requirements of part 70, including public and EPA review, and are therefore part 70 permits. In Nevada, sources subject to section 112(g) (new or modified major sources of hazardous air pollutants) will be issued a part 70 permit (i.e., a Class I permit) prior to construction. The State has authority to establish a MACT requirement for the source pursuant to NAC 445.7191 and 445.7193. The source will then have federally enforceable limits on HAP emissions in compliance with section 112(g). Once EPA promulgates a final section 112(g) rule, NDEP will act expeditiously to revise its hazardous air pollutant regulations to be consistent with the section 112(g) regulations.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for approval, specified in 40 CFR section 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the state's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, EPA is proposing to grant approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for receiving delegation of section 112 standards that are unchanged from federal standards as promulgated.

In a letter dated July 12, 1995, NDEP requested that EPA approve, in conjunction with the title V approval action, NDEP's program for receiving delegation of unchanged section 112 standards as they apply to nonmajor sources. Therefore, today's proposed approval under section 112(l)(5) and 40 CFR section 63.91 of NDEP's program for delegation extends to non-part 70 sources as well as part 70 sources. (See July 12, 1995 letter from Jolaine Johnson, Chief, Bureau of Air Quality, NDEP to Debbie Jordan, Chief,

Operating Permits Section, EPA Region IX.)

NDEP has informed EPA that it intends to obtain the regulatory authority necessary to accept delegation of section 112 standards (existing and future) by incorporating section 112 standards into the Nevada Administrative Code by reference to the federal regulations. The details of this delegation mechanism will be set forth in an Implementation Agreement between NDEP and EPA.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of NDEP's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) to allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) to serve as the record in case of judicial review. The EPA will consider any comments received by September 6, 1995.

B. Executive Order 12866

The Office of Management and Budget has exempted this action from Executive Order 12866 review.

C. Regulatory Flexibility Act

The EPA's actions under section 502 of the Act do not create any new requirements, but simply address operating permits programs submitted to satisfy the requirements of 40 CFR part 70. Because this action does not impose any new requirements, it does not have a significant impact on a substantial number of small entities.

D. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action promulgated today does not include a federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under state law, and imposes no new federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 70

Administrative practice and procedure, Air pollution control, Environmental protection, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 28, 1995.

Nora L. McGee,

Acting Regional Administrator.

[FR Doc. 95–19402 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Parts 433, 438 and 464

[FRL–5271–9]

RIN 2040–AB79

Comment Period Extension on Proposed Rulemaking for the Metal Products and Machinery Phase I Point Source Category

AGENCY: Environmental Protection Agency.

ACTION: Notice of comment period extension.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing an extension of the comment period for the proposed regulations. The proposed pretreatment standards and effluent limitations guidelines were published in the **Federal Register** on May 30, 1995 (60 FR 28210).

DATES: The original date for submission of written comments on the proposed regulations was August 28, 1995. This date is being changed to October 27, 1995.

ADDRESSES: Comments should be submitted to Mr. Steven Geil at U.S. Environmental Protection Agency by mail at U.S. EPA, Engineering and Analysis Division (Mail Code 4303), Office of Science and Technology, 401 M. Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Steven Geil, (202) 260–9817.

SUPPLEMENTARY INFORMATION: The extended comment period for the proposed rulemaking now ends on October 27, 1995. All written comments submitted in accordance with the instructions in the Notice of Proposed Rulemaking will be incorporated into the Record and considered before promulgation of the final rule.

Dated: July 28, 1995.

Robert Perciasepe,

Assistant Administrator, Office of Water.

[FR Doc. 95–19252 Filed 8–4–95; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 12 and 16

[CGD 93–051]

Proof of Commitment To Employ Aboard U.S. Merchant Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is scheduling a public meeting to discuss proof of commitment to employ aboard U.S. merchant vessels. The purpose of the meeting is to receive feedback on how the elimination of the letter of commitment is affecting the maritime industry. Until June 1994, a letter of commitment (proof of commitment) for employment aboard a U.S. merchant vessel was required for an applicant to receive an original, entry level merchant mariner's document to ensure that the applicant intended to work in the maritime industry. With no other criteria to obtain a merchant mariner's document, the Coast Guard determined in 1937 that the letter of commitment was necessary to deter persons from obtaining the card for identification purposes only. In recent years the Coast Guard recognized that the letter of commitment placed the mariner in the awkward situation of being told by a company or union that they could not work without a merchant mariner's document, sending the applicant to the Coast Guard for the document, and the Coast Guard could not issue the document without the company or union issuing a letter of commitment. With the advent of user fees and chemical testing requirements to obtain a merchant mariner's document, the